Distr.
GENERAL

UNCTAD/SDD/SHIP/5/Add.1
13 April 1995

ENGLISH
Original: SPANISH

ARABIC, ENGLISH, FRENCH
AND SPANISH ONLY

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

FOSTERING COMPETITIVE SHIPPING SERVICES (IMPACT OF PROGRESSIVE LIBERALIZATION ON THE DEVELOPMENT OF SHIPPING SERVICES)

Progressive liberalization and the development of shipping services in developing countries: country experiences

Report by the UNCTAD secretariat

Addendum

Selected replies to Note Verbale No. TDN 730/2, dated 18 August 1994

GE.95-51380 (E)

Spain

1. Spain's membership of the European Union means that its shipping policy is largely subordinate to Union policy, which is based on the principle of the liberalization of shipping services in conformity with the basic principles of the Treaty of Rome.

Council Regulation No. 4055/86, relating to the application of the principle of freedom to provide shipping services is, as its name suggests, the basic norm whereby the Treaty of Rome is implemented in this sphere.

As regards the possibility of fostering and granting assistance to national shipping, once again a Union norm applies. Article 93 of the Treaty of Rome prohibits the granting of aid to any sector of the economy except under specific circumstances. Were it to be otherwise, the functioning of the common market would be disrupted. Although shipping is not unaffected by these provisions, the liner conferences have been exempted from the implementation of the Treaty of Rome's provisions on competition. Council Regulation No. 4056/86, authorizes the restrictive practices of the liner conferences in the interests of stability and the other benefits accruing to the users of shipping services.

2. Act 27/1992, dated 24 November, relating to State Ports and the Merchant Marine, is the basic norm regulating shipping in Spain. The Act has made it possible to adapt Spain's normative framework and its shipping administration to the prevailing worldwide trend towards liberalization. Traditional restrictive and protectionist practices such as the prohibition on the export/import of vessels or cargo reservations have been abrogated.

Relations between the various users and providers of shipping services are based on the principle of autonomy and free consent, as is only reasonable.

Moreover, competition in world shipping services and the increasing use of flags of convenience has prompted a number of States, including Spain, to set up a second register. This was made possible in Spain by Act No. 27/1992. The recent introduction of tax and social security incentives, combined with existing advantages regarding flexibility over the nationality of crews, is expected to halt the drift towards other international registers and draw back part of the national fleet, previously registered elsewhere.

3. National policy on the financing of vessels is also determined by Union regulations. The so-called "seventh directive on aid to shipbuilding" exempts assistance to shipbuilding from the overall prohibition of the Treaty referred to above. Within certain limits, the member States of the Union may provide support for their shipyards.

Similarly, the draft agreement on shipbuilding, negotiated within the framework of OECD, and now awaiting signature, will affect both Union and national policy.

Recently, Royal Decree No. 442/1994, dated 11 March, relating to subsidies and financing for shipbuilding, updated the Spanish shipbuilding regulations to bring them fully into line with European norms and OECD conditions.

4. As has already been stated, the implementation of Regulation 4055/86 has led to the elimination in Spain of cargo reservations and opened up the cargo-sharing clauses of existing bilateral agreements with the other countries of the Union.

In addition, within the European Union context, coastal shipping services are gradually being liberalized as a result of the entry into force of Council Regulation No. 3577/92, relating to the application of the principle of freedom to provide services to maritime transport within member States.

Liberalization of international shipping services has brought in its wake a considerable reduction of the international merchant fleet. More intense competition and the consequent decline in freight rates has compelled a number of companies to register their vessels abroad or simply to cease operating. This process has also persuaded a number of shipowners to modernize their fleets.

The exigencies of restructuring and adjusting to the new competitive environment that has emerged as a result of Regulation No. 3577/92 are, if anything, even more intense. Nowadays, many Spanish shipping companies have taken a variety of measures to modernize their fleets, particularly since this market, which is of considerable importance for Spain's maritime sector, is unquestionably attractive to other fleets in the Union.

5. As regards the measures taken by Spain to resolve the problems deriving from the liberalization of shipping services, in addition to those mentioned above concerning the establishment of the Special Register of Vessels and Shipping Companies of the Canary Islands (the "second register" mentioned earlier), attention should be drawn to the major gamble Spain has taken in two important sectors: training and maritime safety. One of the main consequences of liberalization is the presence in Spanish waters of substandard vessels, which heightens the risk of accidents or shipping disasters.

In Spain, Act 27/1992, of 24 November, relating to State Ports and Merchant Shipping, together with the relevant regulations and the National Maritime Rescue and Safety Plan, which provides for the necessary operational resources, are currently being complemented by European regulations. The European Union is implementing a maritime safety policy for its waters, which is also reflected in proposed amendments to a number of international agreements entered into within the International Maritime Organization and the International Labour Organization.

Uruguay

(a) Shipping policies

The shipping policy of the Eastern Republic of Uruguay is consistent with the Government's overall policies of trade liberalization, deregulation of administrative activity and the privatization of public enterprises.

It is based on the development and promotion of subregional agreements facilitating joint and coordinated action, and the attainment, by means of domestic legislation, of suitable conditions to ensure the Uruguayan fleet is internationally competitive.

1. Measures to develop the national merchant fleet have included the adoption of domestic legislation, (Flag Act No. 16.387) which makes it possible for shipping companies to reduce costs, tax exemptions and the updating of regulations on the flagging and deflagging of vessels.

The Act also introduces measures simplifying documentation relating to the Shipping Register and governing the composition of crews for commercial operations.

As a whole, the Act introduces a series of amendments to the earlier Flag Act No. 10.945, of October 1947, as well as measures to ensure that vessels sailing under the Uruguayan flag are more internationally competitive.

(a) The registration of vessels is free of all charges and taxes.

(b) Deflagging is simple and quick, and takes three working days.

(c) No deposit is required to register vessels.

(d) There is no requirement for vessels sailing under the Uruguayan flag ever to visit Uruguayan ports.

(e) The crew required for the commercial operation of the vessel is determined by mutual agreement between the ship's owners and seamen when the vessel is registered. It may be agreed even before registration in order to make it easier for a potential owner to take a decision. If no agreement is reached, the matter is decided by a State committee which acts expeditiously so as to ensure that the vessel's operation is neither hindered nor delayed.

(f) Conditions regarding the composition of the crew are flexible and, in principle, require 75 per cent of the officers and men to be Uruguayans, although this percentage may be reduced if there are reasonable grounds. Special treatment applies to the crewing of vessels from a member country of MERCOSUR, if the previous flag of a vessel registered in Uruguay was that of one of the four member countries.

(g) There is no mandatory annual fee for the use of the flag.

2. In addition to this Act, other measures have been adopted for the development of the merchant marine:

(a) Decree 402/993, of 9 September 1993. This Decree establishes a special scheme for social security contributions for crews of Uruguayan vessels, based on a notional wages scale.

It is estimated that this measure will reduce social security contributions by approximately 66 per cent;

(b) Decree 381/993, of 24 August 1993. This Decree unified the price of fuel for vessels engaged in coasting, international-river and ocean trade, with the sole exception of pleasure boats. It is estimated that the reduction in the cost of fuel for vessels engaged in the coasting trade is approximately 50 per cent.

3. Under current legislation merchant shipping companies are entitled to tax relief that is not available to other industrial and commercial enterprises. In particular, they are exempted from payment of the following significant taxes: tax on industrial and commercial income (30 per cent on net taxable income); value added tax (12 per cent or 22 per cent on goods and services); property tax (2 per cent).

(b) National practices or regulations concerning shipper/ocean carrier relations

There are no national regulations governing relations between shippers and ocean carriers. Carriers are affiliated to the national merchant shipping chamber, while the shippers are affiliated to the Uruguayan Council of International Freight Shippers. Both bodies are non-profit-making associations registered under civil law with legal capacity.

(c) Government policies on ship financing arrangements

Decree-law No. 14.650 of 12 May 1977 declared the existence and development of the merchant marine to be in the national interest, and identified the provision of franchises and facilities and the Merchant Marine Development Fund as the main means of attaining the objective.

Duty-free privileges and facilities

Of the duty-free privileges and facilities granted by the Law, the following are noteworthy:

- Vessels of over 1,000 tonnes light displacement to become part of the national merchant marine may be imported and duty free. Vessels of less than 1,000 tonnes are also duty exempt, provided it is neither technically or economically feasible to build them in Uruguay;

- Imports of parts, equipment, spare parts, fuel and lubricants necessary for their operation are also duty free;

- No taxes are levied on sales of vessels or the provision of guarantees relating thereto, or on the registration of such sales.

Merchant Marine Development Fund

The Merchant Marine Development Fund, which is intended to provide financing for the renovation and expansion of Uruguay's merchant fleet, was established by article 183 of Act No. 14.100 of 29 December 1972. The Act also stipulates that the Fund will be constituted by, inter alia, 10 per cent of the revenue from consular levies. Decree-Law No. 14.650, together with its enabling regulations, established the Honorary Board of Directors of the Fund and determined the conditions applicable to its loans, which are as follows:

- An annual interest rate of 7 per cent on outstanding balances;
- A maximum amortization period of eight years;
- A ceiling of 80 per cent of the total value of the vessel;
- First repayment within a period of 6 to 12 months;
- Security provided by maritime mortgage, a mortgage on immoveable property located in Uruguay or other tangible or personal security;
- Insurance coverage, payable to the Honorary Board of Directors;
- Second-hand vessels may not be more than 15 years' old.

In 1992 consular levies ceased to be charged, thereby depriving the Development Fund of its main source of financing. Consequently, the Flag Act No. 16.387, of 27 June 1993, contained an article empowering the Board of Directors to secure operations with the Banco de la República.

On account of this situation, and of the conviction that the most effective means of developing the merchant marine is through soft loans for the purchase of new vessels to sail under the Uruguayan flag, there are plans for an agreement with the Banco de la República, under which the Bank will open a credit line for shipping companies whose projects have been approved by the administrative body competent for merchant shipping policy and for which a feasibility study has been made by the Board of Directors of the Development Fund.

(d) Measures undertaken to liberalize shipping service, and the results experienced pursuant to such measures

Cargo reservation

Article 25 of the Flag Act No. 16.387 contains a provision intended totally or partially to eliminate the cargo reservation system:

"Article 25. The Executive is authorized to eliminate, either totally or partially, the cargo reservation system on each of the lines on which vessels sailing under the Uruguayan flag operate, with regard to effective reciprocity and the particular conditions prevalent in the various trades or services".

On the basis of this legal authority, the Executive issued Decree No. 31/994, of 25 January 1994, abolishing the controls applicable to cargo reservation, although reservation itself was not eliminated.

In the case of those countries or groups of countries that resort to any form of restrictive practice which prevents or hinders free access to trade or cargoes by vessels under the Uruguayan flag, the controls may be reinstituted.

The application of these regulations is based on the principle of effective reciprocity, which means mutual and fair recognition of the right of access to cargoes and to participation in the actual transport of cargoes generated by a specific trade.

The definition of the principle of reciprocity is one of the keys to the success of the policy of liberalizing shipping services, and it must be a universally understood definition so that companies in the various countries can operate under the same conditions.

For this reason, although the term is defined by Uruguayan legislation, Uruguay concurs with regional policy in this respect, which points to the need for a common definition of the principle of reciprocity and its application.

Flag Act

In addition to the development and promotion of the national merchant fleet, the Flag Act also contains a number of provisions whose purpose is to liberalize shipping services.

In addition to the provision concerning cargo reservation, another provision stipulates that vessels flying the Uruguayan flag will not be compelled to call at Uruguayan ports, thereby permitting them to engage in any international trade.

Another gradual liberalization measure in the Flag Act concerns the composition of the crew for the commercial operation of vessels, and authorizes the inclusion of a fixed percentage of non-Uruguayan crew members which may be higher under certain conditions.

Ports Act

The adoption of the Ports Act has led to lower costs for port users and to shorter laytimes for vessels at the quayside, as a result of the privatization of certain port services.

Act No. 16.246, adopted in April 1992, authorized an increase in private-sector participation and the introduction of changes to port infrastructure, together with the streamlining of port management. The

liberalization planned in this sphere means the end of the National Ports Administration's monopoly of port services, thereby providing the efficient and competitive port services which is one of the priority development objectives.

Results of the liberalization measures

As the liberalization measures were adopted only a short time ago, it is not yet possible systematically to evaluate their results.

(e) Final remarks

The development policies described will enable the Uruguayan merchant marine to operate an ocean-going fleet that meets the country's requirements and is capable of attracting shipping companies and workers in order to counteract as much as possible, the lure of flags of convenience.

In addition, the promising future of the regional integration policies currently under negotiation, such as MERCOSUR and the Paraná-Paraguay waterway (Puerto de Cáceres - Puerto de Nueva Palmira), complemented by promotional measures, will make it possible to build up a fleet that can operate in these environments.

Finally, it should be pointed out that, even though the Flag Act No. 16.387 provides an extremely suitable and favourable legal framework, complementary measures are still necessary in order to render labour regulations applicable to seafarers more flexible and reduce labour costs, which are a particularly sensitive topic on account of Uruguay's highly advanced labour legislation, from which the merchant marine is not exempt.

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